

ILLINOIS POLLUTION CONTROL BOARD
October 6, 2011

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 12-52
) (Enforcement – Land)
RELIABLE MATERIALS LYONS, LLC,)
GSG CONSULTANTS, INC., O.C.A.)
CONSTRUCTION, INC., SPEEDY)
GONZALES LANDSCAPING, INC., PUBLIC)
BUILDING COMMISSION OF CHICAGO,)
BOARD OF EDUCATION OF THE CITY OF)
C.HICAGO)
)
Respondents.)

ORDER OF THE BOARD (by G.T. Girard):

On September 26, 2011, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a four-count complaint against Reliable Materials Lyons, LLC (Reliable Materials), GSG Consultants, Inc. (GLG), O.C.A. Construction LLC (OCA), Speedy Gonzales Landscaping, Inc. (SGL), the Public Building Commission of Chicago (PBC), and the Board of Education of the City of Chicago (CPS). The complaint concerns illegal dumping of waste taken from a 7.5 acre parcel of land located at 401 North Sawyer Avenue, Chicago, Cook County (facility), and disposed at a Clean Construction and Demolition Debris (CCDD) facility located at 4401 First Avenue, Lyons, Cook County. For the reasons below, the Board accepts the complaint for hearing as to all respondents, and directs the clerk to publish notice of the stipulation and proposed settlements of SGL, PBC, and CPS.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2010)), the Attorney General and the State's Attorneys may bring actions before the Board to enforce Illinois' environmental requirements on behalf of the People. *See* 415 ILCS 5/31 (2010); 35 Ill. Adm. Code 103. Under the Environmental Protection Act (Act) (415 ILCS 5 (2010)), the Attorney General and the State's Attorneys may bring actions before the Board to enforce Illinois' environmental requirements on behalf of the People. *See* 415 ILCS 5/31 (2010); 35 Ill. Adm. Code 103.

In Count I of the Complaint, the People allege that Reliable Materials, GSG, OCA, SGL, PBC, and CPS violated Section 21(a) of the Act, 415 ILCS 5/21(a) (2010) by causing or allowing waste (contaminated soil and materials) to be deposited and to accumulate at the CCDD facility, which constituted an illegal open dumping of waste.

In Count II of the Complaint, the People allege that SGL and CPS violated Section 21(d)(2) of the Act, 415ILCS 5/21(d)(2) (2010) and Sections 808.121(a) and (b), 808.122, and 809.301 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 808.121(a) and (b), 808.122, and 809.301 by failing to make a valid special waste determination of soil being hauled from the facility and by delivering special waste without any manifests to transporters, .

In Count III of the Complaint, the People allege that Reliable Materials violated Section 21(d)(1) of the Act 415ILCS 5/21(d)(1) (2010) by conducting a waste disposal operation without a permit issued by the Illinois EPA.

In Count IV of the Complaint, the People allege that Reliable Materials violated Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) (2010) and Section 809.302(a) of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 809.302(a), by accepting waste without for disposal without receiving any completed, signed manifests designating the CCDD facility as the destination for the waste.

The Board finds that the complaint meets the content requirements of the Board's procedural rules and accepts the complaint for hearing. *See* 35 Ill. Adm. Code 103.204(c), (f), 103.212(c).

On September 26, 2011, the People simultaneously with the People's complaint, the People filed a stipulation and proposed settlement with SGL along with a separate stipulation and proposed settlement with the PBC and CPS, accompanied by a request for relief from the hearing requirement of Section 31(c)(1) of the Act (415 ILCS 5/31(c)(1) (2010)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2010)), which requires that the public have an opportunity to request a hearing whenever the State and a respondent propose settling an enforcement action without a public hearing. *See* 35 Ill. Adm. Code 103.300(a).

Under the September 26, 2011 stipulation and proposed settlement with SGL, SGL admits to the jurisdictional allegations and neither admits nor denies the factual allegations related to the violations. SGL agrees to pay a civil penalty in the sum of Ten Thousand Dollars (\$10,000.00).

Under the September 26, 2011 stipulation and proposed settlement with PBC and CPS, PBC and CPS admit to the jurisdictional allegations and neither admit nor deny the factual allegations related to the violations. PBC and CPS agree to jointly pay a civil penalty in the sum of Seventeen Thousand Five Hundred Dollars (\$17,500.00).

Unless the Board determines that a hearing is needed, the Board must cause notice of the stipulation, proposed settlement, and request for relief from the hearing requirement. Any person may file a written demand for hearing within 21 days after receiving the notice. If anyone timely files a written demand for hearing, the Board will deny the request for relief and hold a hearing. *See* 415 ILCS 5/31(c)(2) (2010); 35 Ill. Adm. Code 103.300(b), (c). The Board directs the Clerk to provide the required notice.

As to Respondents Reliable Materials and GSG, the Board finds that the complaint meets the content requirements of the Board's procedural rules and accepts the complaint as it relates to Reliable Materials and GSG for hearing. *See* 35 Ill. Adm. Code 103.204(c), (f), 103.212(c). A respondent's failure to file an answer to a complaint within 60 days after receiving the complaint may have severe consequences. Generally, if Reliable Materials and GSG fail within that timeframe to file an answer specifically denying, or asserting insufficient knowledge to form a belief of, a material allegation in the complaint, the Board will consider Reliable Materials and GSG to have admitted the allegation. *See* 35 Ill. Adm. Code 103.204(d).

The Board directs the hearing officer to proceed expeditiously to hearing as to Respondent Reliable Materials and GSG. Among the hearing officer's responsibilities is the "duty . . . to ensure development of a clear, complete, and concise record for timely transmission to the Board." 35 Ill. Adm. Code 101.610. A complete record in an enforcement case thoroughly addresses, among other things, the appropriate remedy, if any, for the alleged violations, including any civil penalty.

If a complainant proves an alleged violation, the Board considers the factors set forth in Sections 33(c) and 42(h) of the Act to fashion an appropriate remedy for the violation. *See* 415 ILCS 5/33(c), 42(h) (2006). Specifically, the Board considers the Section 33(c) factors in determining, first, what to order the respondent to do to correct an on-going violation, if any, and, second, whether to order the respondent to pay a civil penalty. The factors provided in Section 33(c) bear on the reasonableness of the circumstances surrounding the violation, such as the character and degree of any resulting interference with protecting public health, the technical practicability and economic reasonableness of compliance, and whether the respondent has subsequently eliminated the violation.

If, after considering the Section 33(c) factors, the Board decides to impose a civil penalty on the respondent, only then does the Board consider the Act's Section 42(h) factors in determining the appropriate amount of the civil penalty. Section 42(h) sets forth factors that may mitigate or aggravate the civil penalty amount, such as the duration and gravity of the violation, whether the respondent showed due diligence in attempting to comply, any economic benefit that the respondent accrued from delaying compliance, and the need to deter further violations by the respondent and others similarly situated.

With Public Act 93-575, effective January 1, 2004, the General Assembly changed the Act's civil penalty provisions, amending Section 42(h) and adding a new subsection (i) to Section 42. Section 42(h)(3) now states that any economic benefit to respondent from delayed compliance is to be determined by the "lowest cost alternative for achieving compliance." The amended Section 42(h) also requires the Board to ensure that the penalty is "at least as great as the economic benefits, if any, accrued by the respondent as a result of the violation, unless the Board finds that imposition of such penalty would result in an arbitrary or unreasonable financial hardship."

Under these amendments, the Board may also order a penalty lower than a respondent's economic benefit from delayed compliance if the respondent agrees to perform a "supplemental environmental project" (SEP). A SEP is defined in Section 42(h)(7) as an "environmentally

beneficial project” that a respondent “agrees to undertake in settlement of an enforcement action . . . but which the respondent is not otherwise legally required to perform.” SEPs are also added as a new Section 42(h) factor (Section 42(h)(7)), as is whether a respondent has “voluntary self-disclosed . . . the non-compliance to the [Illinois Environmental Protection] Agency” (Section 42(h)(6)). A new Section 42(i) lists nine criteria for establishing voluntary self-disclosure of non-compliance. A respondent establishing these criteria is entitled to a “reduction in the portion of the penalty that is not based on the economic benefit of non-compliance.”

Accordingly, the Board further directs the hearing officer to advise the parties that in summary judgment motions and responses, at hearing, and in briefs, each party should consider: (1) proposing a remedy for a violation, if any (including whether to impose a civil penalty), and supporting its position with facts and arguments that address any or all of the Section 33(c) factors; and (2) proposing a civil penalty, if any (including a specific total dollar amount and the portion of that amount attributable to the respondent’s economic benefit, if any, from delayed compliance), and supporting its position with facts and arguments that address any or all of the Section 42(h) factors. The Board also directs the hearing officer to advise the parties to address these issues in any stipulation and proposed settlement that may be filed with the Board.

For the reasons stated herein, the Board accepts the complaint for hearing as to respondents Reliable Materials and GSG, grants respondents SGL, PBC, and CPS relief from the hearing requirement, and directs the clerk to publish the stipulation and proposed settlements between the People and SGL, and between the People and PBC and CPS.

IT IS SO ORDERED.

Board Member J.A. Burke abstained.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on October 6, 2011, by a vote of 4-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board